OCT 27 PAGE 16

Supreme Court, U. S.
FILED
OCT 25 1978
MICHAEL RODAK, JR., CLERK

No. 78-5072

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

SHIRLEY DAVIS, Petitioner,

v.

OTTO E. PASSMAN, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL REPLY OF PETITIONER

SANA F. SHTASEL
PETER BARTON HUTT
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorneys for Petitioner

Of Counsel:

COVINGTON & BURLING
888 Sixteenth Street, N.W.
Washington, D.C. 20006

October 1978

No. 78-5072

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

SHIRLEY DAVIS, Petitioner,

v.

OTTO E. PASSMAN, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL REPLY OF PETITIONER

Petitioner Shirley Davis files this supplemental reply in response to the supplement to opposition to certiorari filed by respondent,[1/] and prays that the petition be granted.

In his supplemental response, respondent reprints House Resolution 1380 -- identical to Senate Resolution 431 addressed in his initial filing -- and suggests that this is further evidence that Congress is "solving whatever employee relation problems [which] may exist within its halls." (Supp. Response at 2.) As has been thoroughly discussed in petitioner's reply,

---

1/ Despite reference to Supreme Court Rule 24(5), respondent's Supplement to Response in Opposition to a Petition for a Writ of Certiorari is not timely filed. Rule 24(5) provides for filing of supplemental briefs "calling attention to new cases or legislation or other intervening matter not available at the time of [the party's] last filing." (Emphasis supplied.) H. Res. 1380 was introduced September 25, 1978, and referred jointly to the Committees on House Administration and Rules. 124 Cong. Rec. H10697 (daily ed. September 25, 1978). Respondent's Response in Opposition to Petition for a Writ of Certiorari was filed with this Court October 10, 1978.

even had Senate Resolution 431 been enacted, it would have provided no remedy to petitioner. The same is equally true of the analogous House Resolution, which not only failed to pass prior to the recess, but was never reported out of committee nor debated on the House floor.[2/]

As would have been the case with Senate Resolution 431, the House Resolution by its own terms would have covered only some claims of discrimination by former employees of the House and would have covered no claims where the offending member had left office. H. Res. No. 1380 §§ 3(4), (5), (6). There is no provision that would have provided petitioner with retroactive administrative relief, nor is there any provision that would have conferred a cause of action in the courts upon employees suffering employment discrimination. Nor could an employee have requested monetary damages; both the proposed House Fair Employment Relations Board and the Committee on Standards of Official Conduct could have ordered only "remedial action." H. Res. 1380, §§ 313(b), 321(b). As indicated in petitioner's reply with respect to S. Res. 431, even had H. Res. 1380 passed, former employees of members of the House of Representatives, employees of former members, and complainants dissatisfied with internal House procedures would still have been left without any means to redress discrimination without a judicial remedy.

2/ One year ago, the Obey Commission on Administrative Review culminated a year-long study of House of Representatives' administrative organization and legislative management services with House Resolution 766. Commission on Administrative Review, U.S. H. Rep., 95th Cong., 1st Sess., Recommendations and Rationales Concerning Administrative Units and Work Management (including House Resolution 766) (Comm. Print 1977). The Resolution would have provided, inter alia, an administrative mechanism for review of employment discrimination complaints. H. Res. 766 § 101(6)(b)(8), (9), (10), (11); 504. The Rule governing consideration of these proposals, H. Res. 819, was soundly defeated on the House floor, effectively killing the proposals themselves. 123 Cong. Rec. H10819-28 (daily ed. October 12, 1977).

Petitioner submits that a House Resolution that died in committee, and that would in no case have provided relief to litigants in petitioner's situation, cannot buttress respondent's opposition. Rather, the failure of the House on several occasions to provide even limited relief to certain of its employees emphasizes the need for this Court to determine that money damages are available to a congressional employee who has suffered unconstitutional discrimination and who has no other available remedy.

For the reasons stated above and set out in the petition and reply, certiorari should be granted.

Respectfully submitted,

PETER BARTON HUTT

SANA F. SHTASEL

888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorneys for Petitioner

Of Counsel:

COVINGTON & BURLING
888 Sixteenth Street, N.W.
Washington, D.C. 20006

October 1978

No. 78-5072

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

SHIRLEY DAVIS, Petitioner,

v.

OTTO E. PASSMAN, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 1978, one copy of the Supplemental Reply of Petitioner was served by first-class mail, postage prepaid, upon A. Richard Gear, Esq., Hudson, Potts & Bernstein, Post Office Drawer 3008, Monroe, Louisiana 71201, Attorney for Respondent.

I further certify that all parties required to be served have been so served.

PETER BARTON HUTT
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorney for Petitioner